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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/438,084	11/10/1999	GREGG EVAN ROTHERMEL	6954-2	8859
20575	7590	12/17/2003	EXAMINER	
MARGER JOHNSON & MCCOLLOM PC 1030 SW MORRISON STREET PORTLAND, OR 97205			VO, TED T	
			ART UNIT	PAPER NUMBER
			2122	12

DATE MAILED: 12/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/438,084	Applicant(s) ROTHERMEL ET AL.
	Examiner Ted T. Vo	Art Unit 2122
	--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --	
<p>THE REPLY FILED 24 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may <u>only</u> be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.</p> <p style="text-align: center;"><u>PERIOD FOR REPLY</u> [check either a) or b)]</p> <p>a) <input checked="" type="checkbox"/> The period for reply expires <u>3</u> months from the mailing date of the final rejection. b) <input type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p> <p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p> <p>1. <input type="checkbox"/> A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.</p> <p>2. <input type="checkbox"/> The proposed amendment(s) will not be entered because:</p> <ul style="list-style-type: none"> (a) <input type="checkbox"/> they raise new issues that would require further consideration and/or search (see NOTE below); (b) <input type="checkbox"/> they raise the issue of new matter (see Note below); (c) <input type="checkbox"/> they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) <input type="checkbox"/> they present additional claims without canceling a corresponding number of finally rejected claims. <p>NOTE: _____. </p> <p>3. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____. </p> <p>4. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). </p> <p>5. <input checked="" type="checkbox"/> The a)<input type="checkbox"/> affidavit, b)<input type="checkbox"/> exhibit, or c)<input checked="" type="checkbox"/> request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet</u>. </p> <p>6. <input checked="" type="checkbox"/> The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection. </p> <p>7. <input checked="" type="checkbox"/> For purposes of Appeal, the proposed amendment(s) a)<input type="checkbox"/> will not be entered or b)<input type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. </p> <p>The status of the claim(s) is (or will be) as follows:</p> <p>Claim(s) allowed: _____. </p> <p>Claim(s) objected to: _____. </p> <p>Claim(s) rejected: <u>1-31, 43-67</u>. </p> <p>Claim(s) withdrawn from consideration: _____. </p> <p>8. <input type="checkbox"/> The drawing correction filed on _____ is a)a)<input type="checkbox"/> approved or b)<input type="checkbox"/> disapproved by the Examiner. </p> <p>9. <input type="checkbox"/> Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____. </p> <p>10. <input type="checkbox"/> Other: _____</p>		

(continued from checked box No. 5):

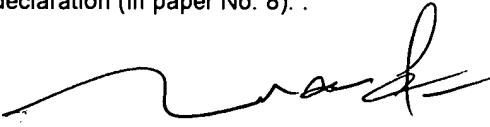
The applicants' remarks in the Amendment after Final Rejection under 37 CFR 1.116 filed on 11/24/03 has been considered. The claims are presented, but appear they are not amended. Therefore there is no proposed amendment.

As set forth in the record, applicants submitted a declaration on 6/16/03 (Paper No. 8), in which they admit that the reference (DuPuis) published more than a year from the application's provisional filing date, and DuPuis is not part of the application. Therefore the declaration admits the invention was also known and done by other (DuPuis) before the application's provisional filing date.

In this communication, applicants submit a newly declaration and exhibit A on 11/24/03. The newly submitted declaration and the exhibit A are not considered and set in the check box no. 6.

The newly submitted declaration and exhibit A are not be considered because:

- They appear to amend the previously submitted declaration. The Oath or Declaration cannot be amended. See MPEP §§ 602.01 and 602.02.
- They appear to contradict with the previously submitted declaration (in paper No. 8).


TUAN DAM
SUPERVISORY PATENT EXAMINER